

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

5:18-cv-657

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docketing process. (INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Maritza Orengo and Edwin Orengo
3606 Wyoming Ride South, Sinking Spring, PA 19808

(b) County of Residence of First Listed Plaintiff **Berks**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael P. Malvey, Esq., Galfand Berger LLP
1835 Market Street, Ste. 2710, Philadelphia, PA (215)665-1600

DEFENDANTS

Speedway LLC

County of Residence of First Listed Defendant **Enon, OH**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Michael T. Droogan, Jr., Esquire, Law Offices of Cullen and Conwell, LLC, 140 East Main Street, DD: (215) 280-3489

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Sections 1332 and 1441

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ Excess of \$50,000 CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/14/18

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FEB 14 2018

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

FEB 14 2018

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Maritza Orengo and Edwin Orengo, 3606 Wyoming Ride South, Sinking Spring, PA 19608

Address of Defendant: Speedway LLC, 500 Speedway Drive, Union, OH 45323

Place of Accident, Incident, or Transaction: 154 Shillington Road, Sinking Spring, PS 19608
(Use Reverse Side for Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a).)

Yes ☒ No ☐
Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

RELATED CASE, IF ANY

Case Number: _____ Judge: ARR Date Terminated: _____

Civil cases are deemed related when "yes" is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

Yes ☐ No ☒

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act—Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify _____)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☒ Other Personal Injury (Please specify): **Premises Liability**
7. ☐ Products Liability
8. ☐ Products Liability—Asbestos
9. ☐ All other Diversity Cases (Please specify: _____)

ARBITRATION CERTIFICATION

(Check appropriate category)

I, Michael T. Droogan, Jr., Esquire counsel of record, do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, Section 3(a)(2), that, to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000 exclusive of interest and cost;
- ☐ Relief other than monetary damages is sought.

DATE: 2/14/18 Michael T. Droogan, Jr., Esquire 55973
Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 2/14/18 Michael T. Droogan, Jr., Esquire 55973 14941418310107
Attorney-at-Law Attorney I.D.#

CIV. 609 (9/99)

FEB 14 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

MARITZA ORENGO and EDWIN ORENGO

v.

No.

SPEEDWAY LLC, SPEEDWAY #6772, HESS RETAIL
STORES LLC, and HESS RETAIL OPERATIONS LLC

18 657

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus — Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security — Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration — Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos — Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management — Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management — Cases that do not fall into any one of the other tracks. (f)

2/14/18
(Date)

2018 FEB 14 9 21 AM

Attorney-at-Law
Michael T. Droogan, Jr., Esq.
Attorney for Defendant,
Speedway LLC

LAW OFFICES OF CULLEN & CONWELL, LLC

ATTORNEYS AND COUNSELORS AT LAW

40 EAST MAIN STREET
NORRISTOWN, PA 19401
TELEPHONE (610) 275-2110
FACSIMILE (610) 275-2331

LS

Michael T. Droogan, Jr.
E-Mail: thedroogs@comcast.net
Direct Dial: (215) 280-3489

February 13, 2018

VIA HAND DELIVERY

18 6571

Kate Barkman, Clerk of Court
United States District Court for the
Eastern District of Pennsylvania
US Courthouse, Rm. 2609
601 Market Street
Philadelphia, PA 19106-1767

**Re: *Maritza Orengo and Edwin Orengo v. Speedway LLC, Speedway #6772,
Hess Retail Stores, LLC and Hess Retail Operations LLC***
Docket No.: to be assigned
Our File No.: 3589-244

Dear Ms. Barkman:

Enclosed please find the original and one copy of defendants', Speedway LLC (incorrectly identified as Speedway, LLC and Speedway #6772) (and as successor by merger with Hess Retail Operations, LLC and Hess Retail Stores, LLC), Notice of Removal, along with its Rule 7.1 Disclosure and a computer disk containing same in .pdf format. Kindly file the originals and return a time-stamped, certified copy in the self-addressed, stamped envelope provided.

Please note, my signature validation form is already on file with the United States District Court for the Eastern District of Pennsylvania.

Also enclosed is the filing fee of \$411.00.

Thank you for your courtesies.

Respectfully submitted,

MICHAEL T. DROOGAN, JR.

MTD/
Enclosures
cc w/enc. (via e-mail): Michael P. Malvey, Esquire

2018 FEB 14 P 5:47

LS
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARITZA ORENGO and EDWIN ORENGO

v.

SPEEDWAY LLC, SPEEDWAY #6772, HESS
RETAIL STORES LLC, and HESS RETAIL
OPERATIONS LLC

18

657

No.

FILED

FEB 14 2018

By KATE BARKMAN, Clerk
Dep. Clerk

2018 FEB 14 P 6 48

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE SAID DISTRICT COURT OF THE UNITED STATES:

The Petitioner, Speedway LLC (incorrectly identified as Speedway, LLC and Speedway #6772) (and as successor by merger with Hess Retail Operations, LLC and Hess Retail Stores, LLC) (herein: "Speedway"), respectfully represents:

1. This Civil Action was commenced in the Court of Common Pleas of Philadelphia County, Pennsylvania, wherein Maritza Orenge and Edwin Orenge are the plaintiffs and Speedway LLC is the defendant. The action is captioned Philadelphia County Court of Common Pleas, January Term, 2017, No. 000261. Plaintiffs commenced this action by a Civil Action Complaint on January 3, 2018. (A copy of said Complaint is incorporated herein by reference and attached hereto as Exhibit "A.")

2. Respondents, Maritza Orenge and Edwin Orenge, are adult individuals residing at 3606 Wyoming Ride South, Sinking Spring Pennsylvania, 19608.

3. In the caption of their Complaint, plaintiffs named the following defendants: Speedway LLC, Speedway #6772, Hess Retail Stores, LLC, Hess Retail Operations, LLC. *Id.* at p.1.

4. The Petitioner, Speedway, is a citizen of the States of Delaware and Ohio, by virtue of being a limited liability company organized and existing under the laws of the State of Delaware, and having its principal place of business in the State of Ohio. The Petitioners sole member is MPC

Investment LLC, a limited liability company organized and existing under the laws of the State of Delaware, and having its principal place of business in the State of Ohio. MPC Investment LLC has as its sole member Marathon Petroleum Corporation, which is a corporation organized and existing under the laws of the State of Delaware, and having its principal place of business in the State of Ohio.

5. Only Speedway LLC is the proper defendant, as it owned and operated the subject convenience store on the on January 31, 2016.

6. Hess Retail Operations LLC and Hess Retail Stores LLC were merged into Speedway LLC on October 1, 2015 and are no longer viable entities. Prior to that each was a Delaware Limited Liability Company, with a principal place of business in Ohio.

7. Speedway #6772, is a fictitious name registered by Speedway LLC. It, too, is not a viable entity.

8. The Respondents are citizens and residents of the Commonwealth of Pennsylvania.

9. Since the Petitioner and the Respondents are citizens of different states, they are deemed diverse with respect to the instant Petition and the prerequisites of under 28 U.S.C. ' 1332(a) and (c).

10. Respondent alleges in her Complaint that on January 31, 2016, she slipped and fell at a Speedway convenience store located at 154 Shillington Road, Sinking Spring, Pennsylvania, which Respondent claims is owned and operated by the defendant, Speedway. *See* Exhibit "A."

11. Throughout their Complaint, Respondents allege Speedway operated a convenience store located at 154 Shillington Road, Sinking Spring, Pennsylvania. *Id.*

12. Petitioner, Speedway, admits it owns the property on which the convenience store is located at 154 Shillington Road, Sinking Spring, Pennsylvania, and it further admits it operates the subject convenience store.

13. Respondent's Complaint alleges the following with respect to the amount in controversy:

- . . . Plaintiff Maritza Orengo sustained disabling, painful, and permanent personal injuries including but not limited to:
- . . . Physical injuries to her body, including serious injuries to her left knee, lower back and buttocks, including an acute comminuted fracture of the distal lateral metaphyseal region of the left femur; hairline fracture about the knee; aggravation and new injury to left knee and prior total knee replacement; bulging of the disc at L5-S1; left posterolateral herniation of the L4-L5; pain and discomfort to the lower back; pain and discomfort to the left lateral hip, loss of strength, loss of motion and other injuries to her body, the full extent of which are not yet known, some or all of which may be permanent in nature;
- . . . Great pain, suffering, and loss of enjoyment of life's pleasures, past and future, emotional upset, mental anguish, humiliation, embarrassment, and a loss of well-being;
- . . . Hospital, medical and rehabilitative expenses, past and future; and
- . . . Loss of earnings and earning capacity, past and future.

14. In light of the foregoing allegations, if Respondents are able to establish the Petitioner is liable for Respondent's damages, it appears that Respondent's damages may exceed the statutory threshold of \$75,000.

15. A notice of removal may assert the amount in controversy if the initial pleading seeks “a money judgment, but the State practice . . . permits recovery of damages in excess of the amount demanded” and the district court finds that the amount in controversy is more likely than not above \$75,000. *See* 28 U.S.C. §1446(c)(2)(A)-(B); *see also Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir. 1993), abrogated on other grounds, *Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010).

16. Based on the averments contained in the complaint it cannot be shown to a legal certainty that the jurisdictional amount cannot be recovered; thus, diversity jurisdiction exists. In *Frederico v. Home Depot*, 507 F.3d 188, 195 – 197 (3rd Cir. 2007), the complaint was filed in state court and removed to federal court. The complaint did not state an exact sum sought. *Id.* at 197. The Third Circuit explained that where the plaintiff limits her claim to avoid federal jurisdiction, “the party wishing to establish subject jurisdiction has the burden to prove to a legal certainty that the amount in controversy exceeds the statutory threshold.” *Id.* at 195. However, where the complaint does not specifically aver that the amount in controversy is less than the jurisdictional minimum, “the challenger to subject matter jurisdiction had to prove to a legal certainty, that the amount in controversy could not exceed the statutory threshold.” *Id.* at *195 – 198. (Emphasis in original). *See also, Denicola v. Progressive Direct Insurance Company*, 2009 WL 1684640 (M.D. Pa) (Denying motion for remand, stating that where the complaint does not limit the amount in controversy below the jurisdictional threshold, the case may only be remanded if it appears to a legal certainty that the plaintiff cannot recover more than the jurisdictional amount of \$75,000).

17. The Petitioner was served with Respondents’ Complaint on January 16, 2018. Thus, Removal is timely.

18. The prerequisites for removal under 28 U.S.C. ‘ 1332(a) (diversity of citizenship and amount in controversy) have been met. If any questions arise as to the propriety of the removal of

this action, Speedway respectfully requests the opportunity to present briefing, argument, and further evidence necessary to support its position that this case is removable.


19. In removing this action, Speedway specifically reserves all of its defenses including, without limitation, all defenses specified in Rule 12(b) of the Federal Rules of Civil Procedure.

WHEREFORE, Petitioner prays the instant action designated in the Philadelphia County Court of Common Pleas, January Term, 2018, No. 00261 be removed from the State Court in the Commonwealth of Pennsylvania to this Court for trial and determination.

Respectfully submitted,

LAW OFFICES OF CULLEN AND CONWELL, LLC

By:



MICHAEL T. DROOGAN, JR., ESQ.
Attorney for Defendants
Speedway LLC (incorrectly identified as
Speedway, LLC and Speedway #6772) (and as
successor by merger with Hess Retail
Operations, LLC and Hess Retail Stores, LLC)

Date: February 14, 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARITZA ORENGO and EDWIN ORENGO :
 :
v. :
 : No.
SPEEDWAY LLC, SPEEDWAY #6772, HESS :
RETAIL STORES LLC, and HESS RETAIL :
OPERATIONS LLC :

CERTIFICATE OF SERVICE

I, Michael T. Droogan, Jr., Esquire, do hereby certify that a true and correct copy of Defendant's Notice of Removal pursuant to 28 U.S.C. §§ 1332 and 1441 was served via e-mail, on this 14th day of February 2018, upon the following:

Michael P. Malvey, Esquire
GALFAND BERGER LLP
1835 Market Street, Suite 2710
Philadelphia, PA 19103

FILED
FEB 14 2018
By KATE BARKMAN, Clerk
Dep. Clerk

LAW OFFICES OF CULLEN AND CONWELL, LLC

By: 

MICHAEL T. DROOGAN, JR., ESQ.
Attorney for Defendants
Speedway LLC (incorrectly identified as Speedway, LLC and Speedway #6772) (and as successor by merger with Hess Retail Operations, LLC and Hess Retail Stores, LLC)



EXHIBIT



EXHIBIT

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

For Prothonotary Use Only (Docket Number)

JANUARY 2018**000261**

E-Filing Number: 1801006339

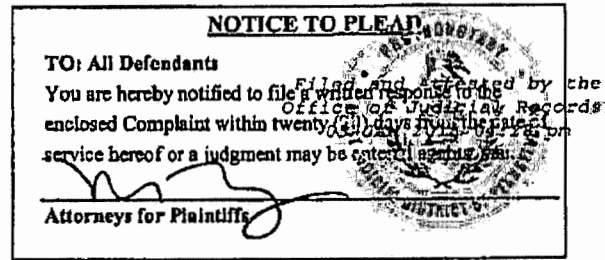
PLAINTIFF'S NAME MARITZA ORENGO		DEFENDANT'S NAME SPEEDWAY, LLC	
PLAINTIFF'S ADDRESS 3606 WYOMING RIDE SOUTH SINKING SPRING PA 19608		DEFENDANT'S ADDRESS 500 SPEEDWAY DRIVE ENON OH 45323	
PLAINTIFF'S NAME EDWIN ORENGO		DEFENDANT'S NAME SPEEDWAY #6772	
PLAINTIFF'S ADDRESS 3606 WYOMING RIDE SOUTH SINKING SPRING PA 19608		DEFENDANT'S ADDRESS 154 SHILLINGTON ROAD SINKING SPRING PA 19608	
PLAINTIFF'S NAME		DEFENDANT'S NAME HESS RETAIL STORES, LLC	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 154 SHILLINGTON ROAD SINKING SPRING PA 19608	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NUMBER OF DEFENDANTS 4	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input type="checkbox"/> Other:		
CASE TYPE AND CODE 2S - PREMISES LIABILITY, SLIP/FALL			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		FILED PROPROTHY JAN 03 2018 C. MILLER	
		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>MARITZA ORENGO , EDWIN ORENGO</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY MICHAEL MALVEY		ADDRESS GALFAND BERGER LLP 1835 MARKET STREET SUITE 2710 PHILADELPHIA PA 19103	
PHONE NUMBER (215) 665-1600	FAX NUMBER (215) 564-2262		
SUPREME COURT IDENTIFICATION NO 89186		E-MAIL ADDRESS mmalvey@galfandberger.com	
SIGNATURE OF FILING ATTORNEY OR PARTY MICHAEL MALVEY		DATE SUBMITTED Wednesday, January 03, 2018, 04:28 pm	

FINAL COPY (Approved by the Prothonotary Clerk)

COMPLETE LIST OF DEFENDANTS:

1. SPEEDWAY, LLC
500 SPEEDWAY DRIVE
ENON OH 45323
2. SPEEDWAY #6772
154 SHILLINGTON ROAD
SINKING SPRING PA 19608
3. HESS RETAIL STORES, LLC
154 SHILLINGTON ROAD
SINKING SPRING PA 19608
4. HESS RETAIL OPERATIONS, LLC
154 SHILLINGTON ROAD
SINKING SPRING PA 19608

GALFAND BERGER L.L.P.
By: Michael P. Malvey, Esquire
Identification No. 89186
By: Farhan S. Ali, Esquire
Identification No. 323218
1835 Market Street, Suite 2710
Philadelphia, Pennsylvania 19103
(215) 665-1600
mmalvey@galfandberger.com



Attorneys for Plaintiffs

MARITZA ORENGO
and
EDWIN ORENGO, w/h
3606 Wyoming Ride South,
Sinking Spring, PA 19608

Plaintiffs

v.

SPEEDWAY LLC
500 Speedway Drive,
Enon, OH 45323

and
SPEEDWAY #6772
154 Shillington Road,
Sinking Spring, PA 19608

and
HESS RETAIL STORES LLC
154 Shillington Road,
Sinking Spring, PA 19608

and
HESS RETAIL OPERATIONS LLC
154 Shillington Road,
Sinking Spring, PA 19608

Defendants

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

TERM

NO:

**THIS IS NOT AN ARBITRATION CASE.
AN ASSESMENT OF DAMAGES
HEARING IS REQUIRED.**

JURY TRIAL DEMANDED.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PHILADELPHIA BAR ASSOCIATION
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, Pennsylvania 19107
(215) 238-6300

AVISO

Le han demandado en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo de la demanda y notificacion para asentar una comparecencia escrita en persona o por su abogado y archivar con la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte puede continuar la demanda en contra suya y puede entrar una decision contra usted sin aviso o notificacion adicional por la cantidad de dinero de la demanda o por cualquier reclamacion hecha por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE DE LLEVAR ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE PARA PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITO ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

ASOCIACION DE ABOGADOS DE FILADELFIA
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, Pennsylvania 19107
(215) 238-6300

COMPLAINT

1. Plaintiffs Maritza Orenge and Edwin Orenge are adult residents and citizens of the Commonwealth of Pennsylvania, residing therein at 3606 Wyoming Ride South, Sinking Spring, PA 19608.

2. Defendant Speedway LLC is an Ohio corporation or other business entity, with its principal place of business at 500 Speedway Drive, Enon, OH 45323.

3. Defendant Speedway #6772 is a Pennsylvania corporation or other business entity, with its principal place of business at 154 Shillington Road, Sinking Spring, PA 19608.

4. Defendant Hess Retail Stores LLC is a Pennsylvania corporation or other business entity, with its principal place of business at 154 Shillington Road, Sinking Spring, PA 19608.

5. Defendant Hess Retail Operations LLC is a Pennsylvania corporation or other business entity, with its principal place of business at 154 Shillington Road, Sinking Spring, PA 19608.

6. Defendants Speedway LLC, Speedway #6772, Hess Retail Stores LLC, and Hess Retail Operations LLC may hereinafter be referred to, individually and collectively, as the Speedway Defendants in this Complaint.

7. At all times material herein, the Speedway Defendants owned and operated numerous gas stations within Philadelphia County, solicited customers via advertisements in Philadelphia, and were conducting business on a routine basis in the Philadelphia area and deriving compensation therefrom.

8. At all times relevant hereto, Defendants owned, controlled, operated, serviced, and/or maintained a gas station located at 154 Shillington Road, Sinking Spring, PA 19608.

9. All events referred herein occurred on or about January 31, 2016 on real estate owned, possessed, and maintained by Defendants.

10. At all times relevant hereto, Plaintiff Maritza Orengo was on the premises of Defendants as a business invitee, visiting the gas station to pump gas into her car.

11. At all times relevant hereto, Plaintiff Maritza Orengo was on Defendants' premises in furtherance of Defendants' business activities.

12. At all times relevant hereto, Defendants invited business invitees, such as Plaintiff Maritza Orengo, to pump gas at their gas pumps, walk through the gas station, and visit the store located on the premises.

13. The weather on January 31, 2016 was clear and dry, and the most recent snowfall or other precipitation was several days prior.

14. Upon information and belief, the temperature on January 31, 2016 at or around the time when the events giving rise to this matter took place, was below freezing.

15. Upon information and belief, while Plaintiff Maritza Orengo was present at Defendants' gas station on January 31, 2016, Defendants allowed ice that had previously formed to remain on the ground in the parking lot.

16. For an unreasonable period of time prior to and including January 31, 2016, Defendants allowed ice to remain on the ground in the publicly accessible areas at the gas station, which created a hazardous walking surface for anyone walking in between the gas pumps at Defendants' premises.

17. At all relevant times hereto, Defendants were responsible for keeping the premises free of defective and dangerous conditions.

18. At all times relevant hereto, no other known person or entity but Defendants were responsible for the inspection, maintenance, and removal of ice at the gas station as well as salting, cindering, and placing other anti-freeze chemicals at the gas station to prevent water from freezing.

19. On January 31, 2016, at approximately 9:33 a.m., Plaintiff Maritza Orengo had completed filling her car with gas and began walking towards the store to get a receipt for the gas she had purchased, which did not print at the pump.

20. While Plaintiff Maritza Orengo was walking in between two sets of gas pumps, she slipped on ice that was permitted to remain on the gas station surface for an unreasonable length of time and violently fell to the ground striking her left knee, lower back, and buttocks causing serious, disabling, and permanent personal injuries described herein.

21. Prior to the time Plaintiff Maritza Orengo walked in between the two gas pumps, Defendants had ample time and opportunity to remove or treat the ice at the gas station.

22. Alternatively, Defendants had ample time prior to Plaintiff Maritza Orengo's arrival at the gas station to place a sign, cone or other warning over the patch of ice to warn invitees, such as Plaintiff, not to walk in the area where her fall occurred.

23. At all times relevant hereto, Defendants expected, knew or should have known that business invitees, such as Plaintiff Maritza Orengo, would walk in between the gas pumps to access the store on the premises.

24. At all times relevant hereto, Plaintiff Maritza Orengo was proceeding cautiously and was using due care for her own safety under the circumstances.

25. Defendants should have inspected and maintained the aforementioned premises in a reasonably safe condition and warned persons on its premises, especially Plaintiff Maritza Orengo, of the existence of any hazardous conditions, particularly the ice that had formed.

26. Defendants knew or should have known for a long time prior to the day of accident that the gas station was in an unsafe condition and that ice had formed and created an unreasonable risk of harm to persons walking around the gas station.

27. Defendants were aware that business invitees visiting the gas station, such as Plaintiff Maritza Orengo, would walk in between the gas pumps to access the store on the premises but yet still allowed the ice to remain in the subject gas station untreated for an unreasonable length of time prior to Plaintiff Maritza Orengo's fall.

28. Defendants knew or should have known that pedestrians walking through the gas station would have their attention diverted to vehicles that would be driving through the area, and would not have the opportunity to observe ice that was allowed to remain on the ground.

29. Defendants undertook the responsibility to plow, cinder, and salt the parking lot area where Plaintiff Maritza Orengo fell.

30. Defendants failed to properly and timely de-ice and apply salt and cinder to the gas station where Plaintiff's fall occurred, despite having a reasonable amount of time to do so prior to the fall.

31. The dangerous accumulation of ice, which was permitted to form in Defendants' gas station, could have been discovered upon minimal inspection by Defendants and salted, cindered, and/or removed with little cost.

32. Defendants' negligence as described within this Complaint was the direct factual cause of Plaintiff Maritza Orengo's injury and resulting losses.

33. As a result of Defendants' negligence, Plaintiff Maritza Orengo sustained disabling, painful, and permanent personal injuries including but not limited to:

- a. Physical injuries to her body, including serious injuries to her left knee, lower back and buttocks, including an acute comminuted fracture of the distal lateral metaphyseal region of the left femur; hairline fracture above the knee; aggravation and new injury to left knee and prior total knee replacement; bulging of the disc at L5-S1; left posterolateral herniation of the L4-L5; pain and discomfort to the lower back; pain and discomfort to the left lateral hip, loss of strength, loss of motion and other injuries to her body, the full extent of which are not yet known, some or all of which may be permanent in nature;
- b. Great pain, suffering, and loss of enjoyment of life's pleasures, past and future, emotional upset, mental anguish, humiliation, embarrassment, and loss of well-being;
- c. Hospital, medical and rehabilitative expenses, past and future; and
- d. Loss of earnings and earning capacity, past and future.

COUNT I – NEGLIGENCE
PLAINTIFFS v. ALL DEFENDANTS

34. Plaintiffs incorporate by reference the preceding paragraphs as though set forth at length herein.

35. The negligence and carelessness of Defendants consisted of the following acts and omissions:

- a. Failing to treat and/or remove ice which had formed upon the subject gas station;
- b. Failing to properly maintain the gas station and keep it in a safe condition;

- c. Failing to properly service and keep its property in good repair;
- d. Failing to warn others, particularly Plaintiff Maritza Orengo, of the dangerous ice that developed in the gas station;
- e. Allowing ice to develop and remain in the gas station for an unreasonable length of time;
- f. Allowing ice to develop as a result of Defendants' failure to properly and sufficiently plow, shovel, de-ice, salt and cinder the gas station;
- g. Failing to properly apply de-icing materials at the premises and gas station;
- h. Failing to provide visual warning signs, cones or other devices to alert pedestrians walking through the gas station to the existence of a dangerous walking condition;
- i. Failing to place a physical barrier over or near the ice so as to prevent Plaintiff Maritza Orengo's fall and injuries;
- j. Failing to prevent the formation of ice in the gas station;
- k. Failing to establish, maintain, and enforce ice removal policies and procedures;
- l. Allowing ice to develop of dangerous size and quality so as to create an unreasonable risk of harm to others, especially Plaintiff Maritza Orengo;
- m. Failing to regularly inspect the gas station;
- n. Failing to exercise the proper and adequate care necessary due to inclement conditions that had resulted in the formation of ice at the gas station;
- o. Failing to keep the ice from becoming a dangerous and unreasonable risk of harm to others, especially Plaintiff Maritza Orengo;
- p. Failing to recognize the dangerous accumulation of ice in the gas station;
- q. Permitting a dangerous condition to exist by failing to pre-treat the gas station with de-icing agents, salt and cinder in advance of the unfavorable weather forecast;

- r. Permitting a dangerous condition to develop and exist (accumulation of ice) by not attempting to place salt, cinder, and de-icing agents on the gas station the afternoon and evening of Plaintiff Maritza Orengo's accident.

WHEREFORE, Plaintiffs demand judgment against all Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus costs, interest, and such other relief that the Court deems just and proper.

COUNT II – LOSS OF CONSORTIUM
PLAINTIFF EDWIN ORENGO v. ALL DEFENDANTS

36. Plaintiffs incorporate by reference the preceding paragraphs as though set forth at length herein.

37. On January 31, 2016, Plaintiff Edwin Orengo was married to Plaintiff Maritza Orengo.

38. In the event that Plaintiff Maritza Orengo prevails on any of her causes of action against the Defendants, Plaintiff Edwin Orengo is entitled to be compensated for his loss of consortium as a result of Plaintiff's accident and injuries.

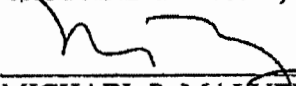
39. As a direct result of Plaintiff Maritza Orengo's accident and injuries, Plaintiff Edwin Orengo sustained a loss of the services, society, and conjugal fellowship of his wife.

WHEREFORE, Plaintiffs demand judgment against all Defendants, jointly and severally, in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, plus costs, interest, and such other relief that the Court deems just and proper.

Respectfully Submitted,

GALFAND BERGER, LLP

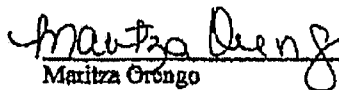
By:


MICHAEL P. MALVEY, ESQUIRE
FARHAN S. ALI, ESQUIRE
Attorneys for Plaintiffs

Dated: 1/3/18

VERIFICATION

The undersigned, having read the attached pleading, verifies that the within pleading is based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that he has read the within pleading and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the pleading are that of counsel, verifier has relied upon counsel in taking this verification. This verification is made subject to the penalties of 18 Pa. R.C.P. §4904 relating to unsworn falsification to authorities.

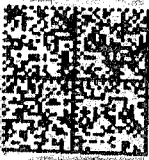

Maritza Orango


Edwin Orango

U.S. POSTAGE PITNEY BOWES



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CERTIFIED MAIL

RECEIVED
JAN 16 2018
SPEEDWAY LAW

Speedway LLC
500 Speedway Drive
Enon, OH 45323

RECEIVED
JAN 16 2018
LAW



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